

## RHS, RBS, RUS, FSA, USDA

## § 1965.216

loss the borrower may suffer if not allowed to prepay has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) *Postponement of prepayment requests.* Prepayment requests will be denied if the request was received less than 180 days in advance of the project prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to allow sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first notification letters were sent. The extension of tenant leases does not substitute for the insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) *Withdrawal or cancellation of prepayment requests.* Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(g) *Borrower appeals of prepayment disapproval.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with subpart B of part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing Office will act in accordance with appropriate sections of this sub-

part. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

### **§ 1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.**

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between FmHA or its successor agency under Public Law 103-354 and the borrower, and the prepayment cannot be accepted under § 1965.215 and exhibit E of this subpart because a need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) *Determination of fair market value.* Within 60 days of the termination of any appeals or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The value arrived at will result from two appraisals. One appraisal will be the appraisal contracted and paid for by FmHA or its successor agency under Public Law 103-354 that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If FmHA or its successor agency under Public Law 103-354 and the borrower

are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third independent qualified appraiser whose appraisal will be binding on FmHA or its successor agency under Public Law 103-354 and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between FmHA or its successor agency under Public Law 103-354 and the borrower.

(b) *Efforts to market and sell the project to nonprofit organizations or public agencies.* Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organizations and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified FmHA or its successor agency under Public Law 103-354 of their interest in purchasing projects that are attempting to prepay. The list will include nonprofit organizations and public agencies that have notified the FmHA or its successor agency under Public Law 103-354 Servicing, State, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3) (i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project's availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose

to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this time period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) *Sales preference to local nonprofit organizations or public agencies.* The borrower will first advertise the project for sale to qualified local nonprofit organizations or public agencies as defined in §1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization, regardless of when offers to purchase are received.

(ii) *Advertising to regional or nationwide organizations.* If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) *Qualifications of nonprofit borrower to purchase.* Notwithstanding the requirements of §1944.211(a)(10) of subpart E of part 1944 of this chapter, nonprofit

organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in §1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the FmHA or its successor agency under Public Law 103-354 Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in exhibit A-2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with §1965.217(d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement:

(Name of purchasing nonprofit entity) certifies that no officer or directorate of (name of purchasing nonprofit entity) has been a person or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under section 515 that have been prepaid.

(d) *Priority between nonprofit organizations and public agencies.* If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience in developing and managing subsidized housing; and

(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

#### **§ 1965.217 Processing applications for transfers to nonprofit corporations or public agencies.**

(a) *Determining eligibility.* After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with §1965.65 (f) of subpart B of this part. FmHA or its successor agency under Public Law 103-354 will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent